

# The Traffic Engineer and Public Liability

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## LAW COMPARED TO ENGINEERING

The very first problem we face in this discussion is that of the nature of law as compared to engineering. The law is not an exact science. It can and does change from time to time, theoretically only to adapt to changing times, situations and conditions.

Actually the law is what the courts say it is in a given set of circumstances, based upon certain principles and guidelines. It must deal with issues where arguments of rights and interests are almost balanced and only a very thin line separates the balance of justice. Note that the United States Supreme Court often votes almost equally on certain issues involving controversial issues.

### *Governments Now Liable*

Traditionally, governments were excluded from liability where they or their officers were performing a strictly governmental function as compared to a proprietary function. The latter would include operation of a utility such as sanitation, water supply or electric utilities. Where the government involved was performing a function related to exercise of police powers the government was primarily exempt from liability. This did not necessarily exempt the personal liability of the officers or officials involved.

When a governmental officer was guilty of an "Ultra-Vires" act, he might be held liable. When applied to a public official this includes those acts contrary to public policy or contrary to some specific statute and those prohibiting the act which he was found to have done.

As government moved into and engaged in more and more activity bordering on strictly nongovernmental functions the law has gradually changed and the legal attitude toward tort liability has changed; not only in its attitude toward governmental agencies but toward liability in all acts contributing to injury.

Two great examples of change in tort liability have been in the areas of product liability and in the liability of governments and their

officers. In the area of product liability the manufacturer of products may be held liable for defects not detected or improper design even though the design at the time may have appeared to be the safest, but was later found to be unsafe and result in injury or harm by the user. Strict instructions on the proper use and warnings against certain improper uses of the product must accompany the product to the hands of the user.

### *Commissions and Agencies Administer Laws*

Governments have moved very fast into the enactment of laws providing for commissions and agencies who are given powers to administer laws through regulations based upon broad guidelines of public policy. These regulations, so long as they are within the guidelines of the original statute or ordinance have the same effect as law. Probably the greatest exercise of this type of legislation is exemplified in the powers given to traffic engineers, or those charged with controlling traffic. Most traffic engineering duties involve administrative discretion.

### *Types of Tortious Liability*

Generally a tort may be defined as a civil wrong or injury to a person, or his feelings and reputation; or to his real or personal property. To properly consider tortious liability in accordance with legal principles, it is necessary to differentiate and classify the several types of tortious conduct. In general, they may be designated as follows:

- (1) Culpable and intentional acts resulting in harm.
- (2) Acts involving culpable and unlawful conduct.
- (3) Nonculpable acts or conduct resulting in accidental harm for which, because of the hazards involved, the law imposes strict or absolute liability, notwithstanding the absence of fault, and
- (4) Culpable acts of inadvertence involving unreasonable risks of harm.

Generally, the plaintiff must show the negligence by the defendant, that this negligence was the proximate cause of the injury, and that he, himself, was free of contributory negligence.

### *Damage Suits Increasing*

I think we must face some realities. We have become a nation of "buck passers." Few will admit their mistakes and are constantly looking for a scapegoat. Nowhere is this more pronounced than among automobile drivers. Except in certain states, there is absolutely nothing to prevent someone from entering a civil suit against you or your agency or government whether he has a legitimate complaint or not.

People are damage suit conscious and, remember, that judgments collected are tax free.

## TRAFFIC ENGINEERING AND PUBLIC LIABILITY

As a traffic engineer you frequently are assuming an administrative role and must interpret the law under which you or your agency is operating, the conditions under which it may be applied, the standards that apply, as well as the procedures to be used in applying the regulation.

### *Apply Regulations After Studies*

A simple example is the zoning of highways for maximum speed limits set out in Burns' 47-(2004-2005). These regulations are to be determined upon the basis of an engineering and traffic investigation of the portions of the highway coming under the regulation. If it is a county highway it must be supported by an ordinance of the county commissioners. In the case of cities it must be acted upon by the council and, in the case of the state, by the highway commission by a resolution.

While all regulations permitted to control traffic do not specifically require an engineering study, the absence of such a study certainly would leave the regulations debatable and subject to review to determine if the regulation does fall within the policy of the law or ordinance under which the administrative officer acted. All acts must avoid any semblance of arbitrariness. In most instances proper notification of the regulation should be made through signs which conform to Uniform Standards—Burns' 47-1903, in the state highway manual. The ordinance, law or regulation must pass the test of reasonableness and not discriminate against persons of the same class or different classes or fail to provide equal protection.

### *Individuals of Agencies Liable*

It should be noted that agents or officers of the government may be personally liable even though the government is not liable for the result of his acts or omissions. If he acts outside the scope of his employment, or personally acts to contribute to injury or damage to another, he may be found liable. His act might be arbitrary and capricious and outside the authority granted in the law he is administering. An omission or failure to act might be the proximate cause of injury or damage to another and result in liability.

## LIABILITY CASES IN INDIANA AND ILLINOIS

In a review of cases involving liability of those responsible for safety on highways it is noted that those in Indiana have been very

fortunate in comparison to those of other states, including our neighboring states. The fast developing number of cases being filed, however, indicate that the honeymoon is over for those of you in Indiana. There is insufficient time to review nearly all the cases available but I will cover a sampling of cases and a brief review of them. I will first cover those of which I have personal knowledge.

*Seymour, Indiana—Chuckhole Case*

Approximately one year ago the City of Seymour was held liable for failure to properly maintain a street or to place appropriate signs warning of extreme chuckholes. The operator of a truck alleged that a chuckhole caused failure of his steering causing him to lose control.

*Shelbyville, Indiana—Improper Warning Case*

Within the past year the City of Shelbyville, jointly with a contractor doing repair work, was held liable for failure to maintain proper warning which resulted in the operator of a vehicle to strike a short section in the pavement which had been removed for replacement.

*Manhole Cover Cases*

Several cities have paid damages to motorists where manhole covers have failed to stay in place and the motorist struck the manhole.

*Marion County—Manhole Cover Case*

Marion County recently was involved in an action where a motorcycle struck a bad chuckhole which was not marked causing the cyclist to lose control.

*West Frankfort, Illinois—Manhole Case*

The City of West Frankfort, Illinois was involved in an action which was compromised and settled. This resulted from the city repaving the street and failing to raise the manhole to the grade level of the street. A lady struck the manhole and her ball-joint popped causing her to lose control. She ran into an abutment and there was serious injury.

*Marion, Illinois—Improper Signing*

I was recently told of a case south of Marion, Illinois. The opposite side of the highway, at a "T" intersection, had a high stone wall approximately the same color as the paving. A "Stop" sign was placed at the intersection but there were no warning signs prior to the approach. The claims court of Illinois awarded a judgment on the grounds the highway department had failed to properly sign the intersection.

## NUMEROUS LIABILITY SITUATIONS

Numerous cases based upon different situations were found and I will attempt to report these with one case for each of the various categorical situations. In *JOHNSON V. CITY OF E. MOLINE*—87NE 2d-22, the city had installed signals at an intersection. One had been knocked down leaving no face toward traffic approaching that leg of the intersection. Johnson was proceeding on a green light and was struck by a car approaching from the leg where no signal faced. The signal had been down for five days. The court held the city liable, stating that the city had no legal duty to install the signals in the first place, however, once installed, they had a duty to maintain them.

### *Street Light Out*

In *SEXTON V. CITY OF ROCKHILL, S.C.* 98 SE 180, the city was held liable because a street light was out for five nights and this was found to be an act of negligence contributing to the accident. The court said: "A failure to light a city street may, under some circumstances, render the street defective. In this case there was construction work going on at the intersection.

### *Unsafe Walkway*

In *LINDMAN V. KANSAS CITY*, 271 S.W. 516, a pedestrian was forced to walk in the street because building material was on the sidewalk. The pedestrian was struck by a car. The city was held liable for not requiring the contractor to provide for safe pedestrian movement. The contractor was also held jointly liable.

### *Oil Slick Surface*

There are numerous cases cited where highways were coated with excess oil and not covered with sand, resulting in skidding of a vehicle. One of these is *McINTOSH V. JEFFERSON COUNTY*, 6 N.C. 2d 406. Another case reported is *KIRCHNER V. STATE*, 223 APP. DIV., N. Y. 513.

### *Signing Cases*

An interesting case is reported in *WYNN V. GANDY*, 170 VA. 590, 197 SE 527, where the court stated that public officers are liable for injury which is the result of their negligence in the performance of duties which do not involve judgment or discretion in their performance but which are purely ministerial.

Several cases were found where signing was misleading and defective and the municipality or county were held liable. These include

JOHNSON V. STATE, 186 APP. DIV. 389 & MARTINSON V. POLK COUNTY, 227 WISC.—444, N.W. 60.

In a case against the City of Rock Island, Illinois, 22 ILL. APP. 2d 389, the city was held liable for failure to maintain a "Stop" sign as specified in the Manual of Uniform Traffic Control Devices. It was alleged that the sign was not reflectorized as required so it could be seen at night; it had not been cleaned or inspected for 15 years; it was 18 in. x 18 in. and should have been 24 in. x 24 in; it was 4 ft 9 in. from the ground and should have been 7 ft; it was located 4 ft 8 in. north of the north curb, whereas it should have been 1 to 3 ft; and it was located 20 ft 10 in. east of the east curb and it should have been 15 ft. All of these conditions made it out of the range of headlights.

On September 4, 1968 the State of Kansas was held liable by the Supreme Court of Kansas in a three car collision where the judgment was \$102,000. The court found the direct cause of the accident was an obscured "Stop" sign and the Kansas State Highway Department had a duty for its proper visibility. Brush obscured the sign and it was only 5 ft high instead of the required 7 ft. It was placed on a county road at the entrance to a state highway.

The Louisiana Department of Highways was held liable in a case where traffic moved from a two-lane highway to a four-lane divided highway for a short distance. The Court said a "Keep Right" sign placed 75 ft to 80 ft from the beginning of the median and a warning sign which was two-tenths mile from the "Y" were inadequate when the driver was faced by oncoming traffic with blinding lights.

In Kentucky a court in Frankfort granted a judgment against the state highway department in a case where the car plunged off the road into the Tennessee River. The sign warning that the road was closed was only 3 ft from the river's edge.

Innumerable cases were found across the country where the highway departments having jurisdiction were held liable for inadequate signing at "T" intersections, curves and at rivers and canals. In some cases the case of liability arose out of misleading signing.

An unusual case: WILLIAMS V. CITY OF MEXICO, 224 MO. APP. 224-34 S.W. 2d, 992; is a case where the city was held liable for failure to place signs on the city maintained street which ended 36 ft short of a bridge which was closed. In other words, the state maintenance began 36 ft back from the bridge. The state had placed signs at the entrance to the old bridge, but the court said the city had a duty to warn traffic approaching this on their street.

*Poor Drainage*

There were cases in Michigan and New York where the plaintiff recovered when surface water on the highway caused an accident. The court said since this had frequently occurred before the authorities were on notice and were liable.

*Debris on Street*

In *ANDREWS V. CITY OF BIRMINGHAM*, 27 ALA.-APP. 377, 172 SO. 681, dirt and stones were left partly across the street for a period of three months. There were no lights and only a sidewalk on one side of the street. A pedestrian walked in the street at night, stumbled and was injured. The city was held liable.

*Snow and Ice*

In an old case against the City of South Bend, *EWALD V. S. BEND*, 104 Ind. App. 679, 12 NE 2d 995, a plaintiff was denied damages who alleged that she was injured when a car failed to stop for a "Stop" sign and struck a bus in which the plaintiff was riding. Plaintiff claimed that snow and ice on the street was responsible for the car being unable to stop. The court said that the city is not liable if they have used reasonable care and diligence, and that they are not required to remove all the snow and ice. They did say, however, that they might become liable if the street becomes defective and unsafe by reason that snow and ice have become an obstruction to travel and the city has had both time and opportunity to remove or repair.

**SUMMARY**

In summing up, it will be observed that liability occurs in more instances where there is an omission or negligence in maintenance. It would appear from the above cases that this is a condition where you can get into more trouble from not doing anything than you can from doing something.

After a review of these cases it would appear that areas where you must exercise good judgment include those cases where you are responsible for signing, routing and controlling traffic when construction is taking place and traffic is maintained. You have a responsibility to avoid the use or placement of any signs or controls which do not conform to the uniform standards. You have a responsibility to observe traffic in operation after setting up new signing or controls to determine that it is not misleading. You have a definite responsibility to provide a quick repair or maintenance. You have a responsibility to provide sufficient warning to hazardous locations. Finally, to avoid personal liability your acts must be within the powers vested in your respective departments.